

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BARTRAM YIHNI DABNEY (93-A-7310),

Plaintiff,

v.

ORDER
97-CV-489A

MICHAEL MCGINNIS, RICHARD MORSE,
DENNIS RYAN, JAMES CASSELBERRY
AND M. SOLOMANE,

Defendants.

The above-referenced case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(B). On March 31, 2006, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendants' motion for summary judgment be granted and that the complaint be dismissed against defendants Michael McGinnis and Richard Morse with respect to plaintiff's cause of action for cruel and unusual punishment resulting from the application of restraints in the recreation yard and that the complaint be dismissed against defendant Dennis Ryan for lack of personal involvement in an alleged assault upon plaintiff on October 22, 1997.

Although he is represented by assigned counsel, assigned counsel did not file any objections. However, the plaintiff filed *pro se* objections on or before May 1,

2006.¹

Pursuant to 28 U.S.C. § 636, this Court must perform a *de novo* review of the Report and Recommendation. Upon a *de novo* review of the Report and Recommendation, and having considered plaintiff's *pro se* objections, the Court adopts the proposed findings set forth in the Report and Recommendation.²

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendants' motion for summary judgment is granted and the complaint is dismissed against defendants Michael McGinnis and Richard Morse with respect to plaintiff's cause of action for cruel and unusual punishment resulting from the application of restraints in the recreation yard and dismissed against defendant Dennis Ryan for lack of personal involvement in an alleged assault upon plaintiff on October 22, 1997. The case is referred back to Magistrate Judge Schroeder for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: May 9, 2006

¹ The objections were filed with the Court on May 1, 2006, but were evidently received in the *pro se* office on an earlier date. The Court will assume that the objections were timely received by the *pro se* office before the expiration of the ten-day period.

² In his *pro se* objections, plaintiff challenges certain factual statements in the Report and Recommendation regarding his prison term and the nature of disciplinary charges against him. The Court finds it unnecessary to resolve these factual discrepancies as they have no bearing on the legal analysis or conclusion reached by the Magistrate Judge.